

### REMARKS

The Specification has been amended to recite the hydrochloride salt of the compound of formula, the support for which may be found in paragraph 0019 of U.S. Provisional Application No. 60/441,406, filed January 16, 2003, which was incorporated by reference. Claims 1, 48, 49, 59, 70, 81-84, and 86 have been amended to recite the tartrate and hydrochloride salts of the compound of Formula I. Support for these amendments may be found in the specification, for example, in paragraphs 0039, 0119, and 0133. Claims 3-5 and 8 have been amended to correct typographical errors. New Claims 87-89 have been added. Support for new Claim 87 may be found in the specification, for example, in paragraph 0018. Support for new Claim 88 may be found in the specification, for example, in paragraphs 0097-0098. Support for new Claim 89 may be found in the specification, for example, in paragraph 0097. Claims 9-47 have been canceled without prejudice to pursuing them in a divisional, continuation, or continuation-in-part application. No new matter has been introduced.

Claims 1-8 and 48-89 are pending. Claims 49-86 stand withdrawn. Applicants reserve rights of rejoinder of Claims 49-86. The Applicants have carefully considered all of the Examiner's rejections, but respectfully submit that the claims are allowable for at least the following reasons.

#### Rejections under 35 U.S.C. § 103

Claims 1-8 and 48 were rejected under 35 U.S.C. § 103(a) as being obvious over WO 01/66521 (Anderson et al.) in view of Goodman and Gilman's *The Pharmacological Basis of Therapeutics*, 7<sup>th</sup> edition, pp. 340-343 and 403-404 (Goodman). The Examiner asserted that Anderson et al. teaches a generic formula that broadly encompasses the compound of Formula I presented in Claims 1-8 and 48. The Examiner argued that "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the particularly claimed compound of claim 1, as it was disclosed in the genus of formula 1 of Anderson et al. The compound of both applications are drawn to equivalent compounds and methods of use and as such it is prima facie obvious to utilize the specific compound currently claimed." Office Action, pages 4-5. The Applicants respectfully disagree.

"The fact that a claimed compound may be encompassed by a disclosed generic formula does not by itself render that compound obvious." *In re Baird*, 29 U.S.P.Q.2d 1550, 1552 (Fed.

Cir. 1994). *See also* M.P.E.P. § 2144.08(II). “[I]n cases involving new chemical compounds, it remains necessary to identify some reason that would have led a chemist to modify a known compound in a particular manner to establish prima facie obviousness of a new claimed compound.” *Takeda Chemical Indus., Ltd. v. Alphapharm Pty., Ltd.*, 492 F.3d 1350, 1357 (Fed. Cir. 2007). Out of the many compounds encompassed by the generic structure depicted in Anderson et al., there would have been no reason for a chemist to select the chemical substituents necessary to arrive at the compound of Formula I as recited in Claims 1-8 and 48. In *Baird*, the Federal Circuit was faced with an obviousness rejection based on a generic diphenol formula containing “a large number of variables.” 29 U.S.P.Q.2d at 1553. While the formula “unquestionably encompass[ed] the claimed] bisphenol A when specific variables [were] chosen, there [was] nothing in the disclosure [of the prior art] suggesting that one should select such variables.” *Id.* The court accordingly overturned the obviousness rejection. Similarly, nothing in Anderson et al. suggests to select chemical substituents in such a way as to arrive at the claimed compound of Formula I. Thus, it is respectfully submitted that the compound of Formula I is not prima facie obvious over Anderson et al.

Each of Claims 1-8 and 48 and new Claims 87-89 recite the compound of Formula I. As discussed above, this compound is not obvious over Anderson et al. Goodman does not teach or suggest anything related to the compound of Formula I. Thus, the Applicants respectfully submit that Claims 1-8 and 48 are not obvious over the cited art.

*No Disclaimers or Disavowals*

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

**Application No.:** 10/759,561  
**Filing Date:** January 15, 2004

Co-Pending Applications of Assignee

Applicant wishes to draw the Examiner's attention to the following co-pending applications of the present application's assignee.

Serial Number	Title	Filed
11/416527	SELECTIVE SEROTONIN 2A/2C RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR NEURODEGENERATIVE DISEASES	05/03/06
11/416855	SELECTIVE SEROTONIN 2A/2C RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR NEURODEGENERATIVE DISEASES	05/03/06
11/416594	SELECTIVE SEROTONIN 2A/2C RECEPTOR INVERSE AGONISTS AS THERAPEUTICS FOR NEURODEGENERATIVE DISEASES	05/03/06

Please charge any additional fees, including any fees for extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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